THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.1087 of 2006

DATED:28-03-2006

Between:

K.Chandra Reddy .. Petitioner

And

The Joint Collector-II, Ranga Reddy District,

177-Khairthabad, Hyderabad.and others.

..Respondents

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.1087 OF 2006

ORDER:

The petitioner is the younger brother of the third respondent. The father of the petitioner and the third respondent was the owner of the land admeasuring Acs.13.01 guntas in Survey No.162 (part) situated at Macha Bollaram Village of Malkajgiri Mandal, Ranga Reddy District. After the death of their father, the land was partitioned between the petitioner and the third respondent, and their mother, Smt. Salamma, was allotted an extent of Acs.4.08 guntas towards her share. Her name was mutated in the revenue records as pattadar. The petitioner alleges that before her death on 20-03-2005, she was staying with him and executed a registered Will on 09-10-2003 bequeathing her share in the property in favour of the petitioner. After the death of their mother, the petitioner is in possession of the property. He applied for mutation as per Section 4 of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 ('ROR Act', for brevity). After conducting enquiry, when the matter was under consideration before the Mandal Revenue Officer, the second respondent herein, the third respondent filed a suit, being O.S.No.188 of 2005 on the file of the Court of the II Additional District Judge, Ranga Reddy, District, for declaration that the Will executed by the mother of the petitioner and the third respondent, is null and void. The third respondent also filed I.A.No.1334 of 2005 for injunction and further prayed to keep the proceedings of the Mandal Revenue Officer in abeyance until the suit is decided as per Rule 9(1)(c)(ii) of the Andhra Pradesh Rights in Land and Pattadar Pass Books Rules, 1989 ('the Rules', for brevity). The

lower Court, however, declined to pass such an order. At that stage, the third respondent preferred a revision before the first respondent, who by impugned proceedings in Case No.D5/4917/2005, dated 15-10-2005, allowed the revision petition of the third respondent directing the second respondent to await the outcome of the civil suit and to proceed with the proceedings pending before him.

Pursuant to the notice ordered by this Court, the third respondent has filed a counter-affidavit. It is mainly the case of the third respondent that when the civil suit for declaration of title is pending before the civil Court, the authorities under the ROR Act are precluded from deciding the disputed claims, and therefore, the order passed by the Joint Collector is justified.

The learned counsel for the petitioner, Sri J.Suresh Babu, has raised various grounds based on Section 9 of the ROR Act and Rule 21 of the Rules. However, for the purpose of disposal of this writ petition, it is not necessary to consider all these issues. There is no denial that as per proviso to Section 9 of the ROR Act, it is mandatory for the revisional authority to afford an opportunity to any person, who is likely to be adversely affected by the order of the revisional authority. The first respondent admittedly did not issue any notice to the petitioner, and for this reason alone, the order cannot be sustained.

Accordingly, the writ petition is allowed and the impugned order is set aside. The matter is remitted to the first respondent for a fresh consideration and disposal within a period of two weeks from the date of receipt of a copy of this order. It shall be open to the petitioner and the third respondent to raise all the grounds before the first respondent including the ground that in the absence of any order passed by the Mandal Revenue Officer, a revision under Section 9 of the ROR Act does not lie. Till the matter is decided by the Joint Collector, the Mandal Revenue Officer shall not pass any orders. No costs.

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(V.V.S.RAO, J)

28-03-2006

Note: Furnish C.C. by 31-03-2006

(B/o) GJ